

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

WESTERN RADIO SERVICES CO.,
Defendant.

UNITED STATES CELLULAR
OPERATING COMPANY OF MEDFORD,
Intervenor-Plaintiff,

v.

WESTERN RADIO SERVICES CO.,
Defendant.

Case No. 3:11-cv-00638-SI (Lead Case),
Case No. 6:11-cv-06209-SI

OPINION AND ORDER

SIMON, District Judge.

On August 29, 2012, the Court granted summary judgment for Plaintiff United States of America (“Forest Service” or “Plaintiff”), finding Defendant Western Radio Services Co. (“Western Radio” or “Defendant”) liable for intentional trespass and breach of contract. Dkt. 148. Pending before the Court is the question of appropriate remedy.

During oral argument on October 24, 2012, the Court declined to exercise its equitable authority to cancel the parties’ lease, as requested by Plaintiff. Plaintiff also seeks an injunction requiring the removal of Defendant’s new tower. From Plaintiff’s representations during oral argument, it appears to the Court that the appropriateness and conditions of such an injunction

turns at least in part on several disputed questions of fact, including evidence of Defendant's alleged bad faith, the credibility of Richard Oberdorfer (Defendant's principal), and possibly the Forest Service's treatment of other users of Walker Mountain. These fact questions cannot be resolved at the summary judgment stage. A trial will be required to take evidence and testimony, at the very least to enable this Court to make the necessary credibility determinations.

In the interim, the Court has directed the parties to engage in mediation. Following the submission of an ADR report no later than January 25, 2013, a trial date will be scheduled in consultation with the parties.

Dated this 29th day of October, 2012.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge